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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 5.

HARRY H. WOODRING, Secretary of War, and H. A. A. SMITH, General Purchasing Officer and Chief of Washington Office, Panama Canal, *Petitioners,*

v.

JUSTUS S. WARDELL, Receiver, District National Bank of Washington, D. C., *Respondent.*

PETITION FOR REHEARING.

BRICE CLAGETT,
CHARLES E. WAINWRIGHT,
Attorneys for
Justus S. Wardell, Receiver.

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PETITION FOR REHEARING.

Comes now Justus S. Wardell, as Receiver of the District National Bank, Washington, D. C., respondent in the above-captioned cause, by his attorneys, and submits his petition for rehearing of the above-entitled cause, and in support thereof respectfully shows:

The majority opinion in cause numbered 6, Inland Waterways Corporation, et al., petitioners, v. Frederick J. Young, Receiver of the Commercial National Bank of Washington, D. C., respondent, which is followed and adopted in cause numbered 5, reasons, as we construe the opinion, that inas-

much as a public policy and practice of securing "public money" of the United States, had, as a "practical response to disastrous experience", developed prior to the enactment of the National Bank Act of June 3, 1864, 13 Stat. 99, including Section 45 thereof (12 U. S. C. Section 90), such policy and practice must be considered as having been perpetuated in the subsequently enacted National Bank Act, not by specific provision therein, but nevertheless as implicitly therein vesting such power in the banks, as financial agents of the United States, in order that they might be utilized by the Government in protecting its funds. In summarizing the pertinent historical developments prior to the enactment of the National Bank Act, the majority opinion states:

> "Congress has necessarily been concerned from the beginning to provide appropriate safeguards for government funds. One of the motives in the establishment of the first Bank of the United States was its availability as a safe depositary for such funds. They were kept there until the expiration of that Bank's charter in 1811. Thereafter and until the second Bank of the United States was chartered, government monies were kept in state banks. These deposits were without security, and as a consequence severe losses followed the financial dislocation which came with the War of 1812. This experience led the Government to exact security, and losses became negligible. Philipps, Methods of Keeping the Public Monies of the United States, pp. 6-20; H. Rep. No. 358, 21 Cong., 1st Sess., Vol. 3, p. 12; IV McMaster, History of the People of the United States, p. 295 *et seq.;* III American State Papers, Finance, p. 11. The second Bank of the United States, established partly to serve as a Government depositary, kept most of the federal funds until their withdrawal in 1833 by Secretary Taney. But as a condition to their deposit in various state banks after 1833, Taney, acting upon the earlier experience of the Treasury under Secretaries Gallatin and Crawford, exacted appropriate security.[3] By the Act of June 23, 1836, 5 Stat. 52, Congress translated Treasury practice into

legislative policy. It thereby became the Secretary's duty, whenever wisdom dictated, to require collateral for Government funds. As a result security was demanded of almost all the depositaries. Phillips, *op cit.*, p. 63. The panic of 1837 brought another modification. Government monies were held by the local collectors and by the Treasury itself, and a little later deposited in the new Sub-Treasury. But in 1841 the old method of deposit in state banks was resumed under the practice which had been introduced in 1833. Exec. Doc. No. 123, 27th Cong., 2nd Sess., p. 2; Phillips, *op cit.*, p. 113. This arrangement—that is, deposits secured by collateral—continued until the Sub-Treasury Act of 1846, 9 Stat. 59, led to the withdrawal of Government funds from private banks. The sub-treasury system persisted until the establishment of the modern national banking system."

The foregoing summary indicates, chronologically, these successive developments:

(a) A policy of requiring security from banks, prior to the Act of June 23, 1836, without the sanction of express Congressional enactments.

(b) The enactment of the Act of June 23, 1836, 5 Stat. 52, wherein "Congress translated Treasury practice into legislative policy."

(c) Discontinuance for the time being of deposits of public moneys in the banks, and retention of them by the collectors and by the Treasury itself, in consequence of the panic of 1837.

(d) Resumption, in 1841, of deposits of public moneys in the state banks, secured by collateral.

(e) Passage of the Sub-Treasury Act of 1846, 9 Stat. 59, resulting in the withdrawal of government funds from private banks and the deposit and retention of said moneys in the sub-treasury from that time thenceforth to the establishment of the National Banking System in 1864.

(f) Enactment of Section 45 of the National Bank Act authorizing the deposit of public moneys of the government in national banks under the restrictions and requirements therein specified and when said banks had been designated as depositaries of public money by the Secretary of the Treasury.

In view of the foregoing developments, may not the conclusion of the majority opinion be fairly open to question and justify reconsideration? For approximately 18 years prior to the enactment of the National Bank Act in 1864, the government's money had not been deposited in banks at all, but in the sub-treasuries. Therefore, when the National Bank Act was passed, there existed no policy or practice of depositing government money in banks.

Furthermore, it was the invariable practice prior to 1864 to have the selection of government depositaries made by the Secretary of Treasury[1] and to have the Secretary of the Treasury control the distribution of the public money of the United States and to exact security for deposits when security was required. There was never any practice of having miscellaneous officers of the government perform this function. It was Hamilton, Secretary of the Treasury, who began depositing public money of the United States in the first Bank of the United States,[2] and it was he likewise who placed some money in state banks as depositaries.[3] After the closing of the first Bank of the United States, it was the Secretary of the Treasury Gallatin who issued a circular designating certain banks as depositaries of United States money.[4] Under the Act of April 10, 1816,

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[1] The only exception was under the Act of 1809, when Congress passed a law requiring disbursing officers to keep the public moneys in some incorporated bank designated by the President of the United States. Phillips, Methods of Keeping the Public Money of the United States, p. 6.

[2] Phillips, Op cit., p. 4.

[3] Phillips, Op cit., pp. 5, 9.

[4] Phillips, Op cit., p. 15.

creating the second Bank of the United States, specific provision was made for depositing public money in the Bank unless the Secretary of the Treasury should order the public money deposited elsewhere.[5] In 1817, state banks approved by the Secretary of the Treasury were named as depositaries of the public money and the Secretary addressed a circular to them regulating the management of such money.[6] When public money was again deposited in state banks after 1833, and security for such deposits exacted, the depositaries were designated and the security required by Secretary of the Treasury Taney.[7] In making his recommendations to Congress in 1834, for the continued deposit of public money in state banks, Secretary Taney proposed that the banks were to be designated by the Secretary and the Secretary was to be authorized to demand security.[8] Under the Act of June 23, 1836, the Secretary of the Treasury was to select state banks as depositaries of the public money, the banks selected were to furnish the Secretary with statements of condition and permit examinations of condition and the Secretary might require collateral security.[9] By the Act of June 23, 1836, discretion in selecting banks was for the first time taken away from the Secretary of the Treasury, and Congress provided that the public money should be deposited in state banks in proportion to the representation of the states in Congress.[10] It was this departure from the practice of having the Secretary of the Treasury manage the distribution of the public money, which was one of the chief causes of the panic of 1837.[11] After August 13, 1841,

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[5] Phillips, Op cit., p. 26.
[6] Phillips, Op cit., pp. 30, 31, 32.
[7] Phillips, Op cit., p. 54.
[8] Phillips, Op cit., p. 56.
[9] Phillips, Op cit., pp. 59, 60, 61.
[10] Phillips, Op cit., pp. 74, 75, 76, 77, 78, 79.
[11] Phillips, Op. cit., pp. 80-98.

when the law of June 23, 1836, was repealed,[12] and the Independent Treasury Law was also repealed, it was the Secretary of the Treasury again who designated bank depositaries for the public money of the United States and it was the Secretary of the Treasury who required the giving of collateral security.[13] Thereafter, came the Act of August 6, 1846, (the Sub-Treasury Act) followed by the National Bank Act in 1864.

It is undoubtedly true, therefore, that in enacting the National Bank Act in 1864, Congress deliberately legislated with the previous financial history of the government in mind. That is why, as we view the matter, it may be considered that the National Bank Act constitutes by itself a complete system for the establishment and government of national banks[14] designed not only to safeguard the public money of the United States by having such public money deposited in banks selected by the Secretary of the Treasury, but also to have such banks, under the regulations of the Secretary, act as financial agents of the government, as well as to make banks of such soundness as to invite their use by the people of the United States, and to be capable, in case of disaster, of assuring private depositors equality of treatment with all other depositors other than those, such as the Secretary of the Treasury, to whom Congress specifically has authorized a priority or secured status.

In particular, Congress did not leave the matter of securing public money to be inferred from the general powers of the national banks. The Act is not silent in that regard. The history prior to 1864 taught that disaster or inconvenience followed every system of safeguarding the public money of the United States which did not concentrate in the hands of the Secretary of the Treasury the management of government finances and authorize him and him alone to

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[12] Phillips, Op cit., pp. 111, 112.

[13] Phillips, Op cit., pp. 112, 113.

[14] *Cook County National Bank* v. *U. S.*, 107 U. S. 445.

select depositaries of public money and exact security therefor. Hence, Section 45 embodied precisely the entire experience of the government in handling public money prior to the enactment of the National Bank Act. Thus the securing of deposits of government funds found desirable by the history of government laws and practice prior to 1864 was accomplished by the direct language used in Section 45 wherein Congress gave the Secretary of the Treasury the right to secure such public funds and left to the Secretary of the Treasury's discretion the extent to which he should deposit any public money in national banks; what national banks should be designated as depositaries of public money; the amount of public money which should be placed in any particular national bank; and the extent and character of the security that should be taken for such deposits as were made in national banks.

We respectfully submit that had Congress intended, by the enactment of the National Bank Act, and particularly by Section 45, thereof, that any government officer or agency could make deposits in national banks and that national banks should have the broad powers to pledge their assets to the practically unlimited degree and extent inferentially indicated by the majority opinion, such intent would have been expressly and unmistakably manifested in the drafting of Section 45.

Is it not appropriate to believe that, since Congress was not silent on this subject, but made careful provision for securing deposits of "public money" in banks selected by the Secretary of the Treasury, Congress thereby covered the field and intended that deposits of funds other than "public money" of the United States made by agents of the United States other than the Secretary of the Treasury, should be treated just as private deposits were treated?

Furthermore, assuming for discussion that Congress did not, in 1864, visualize or have in contemplation, the manifold developments and forms of future governmental activities, is it not significant that when, from time to time, specific and additional governmental activities through corpo-

rate or other agencies of the government were brought to the attention of Congress, that body saw fit to provide authority in national banks to pledge their assets as security for the deposits of such agencies only in the specific instances expressly indicated, (some of which are enumerated in the majority opinion in the instant case, and others of which are enumerated in note 11 of the opinion in *Texas and Pacific Railway Co.* v. *Pottorff* (1934) 291 U. S. 245, at page 257), and yet such authority was not expressly provided by Congress with reference to the government agencies involved in the instant suit, either at the time of the creation of such agencies by Congress, or by special enactment? In other words, does not the fact that Congress saw fit to provide authority for the pledge of assets of national banks to secure the deposits of certain governmental agencies, indicate a lack of intent that such security should be given to other governmental agencies concerning which such provision had not been made?

That Congress, in setting up such agencies as the Emergency Fleet Corporation, the Inland Waterways Corporation, and various other agencies outside of the "regular" government establishment, intended that such agencies should be dealt with as private rather than government agencies, was clearly established by this Court in *Keifer & Keifer* v. *R. F. C.* (1939) 306 U. S. 381, and again in *Federal Housing Administration* v. *Ruth Burr*, No. 354, October Term 1939, decided February 12, 1940. Why, if Congress intended that such agencies should not have the historical governmental immunity from suit, did not Congress also intend that the money of such agencies, when deposited in banks, should be treated like ordinary deposits rather than as public money? Does not the entire theory of historical development, coupled with the fact that Congress in the National Bank Act made specific provision for safeguarding "public money" of the United States, lead to the conclusion that where deposits did not fall within the category spelled out in Section 45, Congress did not intend that such deposits should be secured unless it passed a special Act for that purpose? Is it not especially significant that

the funds involved in the companion case, Number 6, are deposits of two government corporations, the Inland Waterways Corporation and the Emergency Fleet Corporation, which do not enjoy governmental immunity from suit, and that the funds involved herein are money order deposits from the Panama Canal Zone, which generally have not been dealt with by Congress, as "regular" government funds?

Shortly after the decisions of this Court in *Texas & Pacific Ry. Co.* v. *Pottorff* (1934) 291 U. S. 245, and *Marion* v. *Sneeden* (1934) 291 U. S. 262, the Secretary of the Treasury sent identical letters to the President of the Senate and the Speaker of the House, saying that these two decisions created "urgent necessity" for the prompt enactment of an amendment to Section 45 of the National Bank Act, which should eliminate doubt as to the power of national banks to give security for funds such as those involved in the present case. (Appendix, p. 14.)

A proposed amendment was attached to the letters. (Appendix, p. 16.) The Secretary's request undoubtedly had the attention of Congress. Besides being formally laid before both Houses ((1934) 78 Congressional Record, 7596, 7726), and printed as a Senate document (No. 175, 73d Cong., 2d Sess.) it was presented to the Senate in session (78 Cong. Rec. 11466), and a bill (S. 3558, 73d Cong., 2d Sess.) embodying the amendment was introduced and referred to committee (78 Cong. Rec., 8154). Later in the session, when the Senate was considering a banking bill (S. 3748) which contained nothing on the question of securing deposits, an amendment was proposed from the floor, to extend somewhat the power of national banks to secure deposits of states and their subdivisions, along lines proposed in the Secretary's letter. The Senator in charge of the bill accepted the amendment but apparently only because it improved the competitive position of national banks against state banks, saying that "the committee is opposed to the general principle of public deposits having any security and to giving them a preference over the deposits of the ordinary depositor." (78 Cong. Rec. 12058.) The entire bill

failed of passage. When it was in effect reintroduced in the next session (H. R. 7617), becoming the Banking Act of 1935, which amended the National Bank Act in many particulars, even the aforesaid amendment which had previously been adopted by the Senate was omitted.*

Is it not significant that Congress failed to enact the legislation thus recommended by the Secretary of the Treasury and may not such failure reasonably be construed as indication of a legislative policy not to broaden and increase the power of national banks to pledge their assets to cover deposits of Governmental agencies of the type involved in the instant case?

The legislative policy on the part of Congress to protect private depositors in national banks and to insure a ratable distribution of the assets of such banks when in receivership, even at the expense of the United States, was early considered by this Court in *Cook County National Bank* v. *United States* (1883) 107 U. S. 445, 448, 449, wherein this Court held that inasmuch as the National Bank Act constituted a complete system for the establishment and government of national banks, not only with reference to their organization and operation, but also as controlling the winding up of such institutions and the distribution of their assets, the United States was not entitled to any preference or priority over the general common creditors of the national banks, in view of the absence of specific statutory provisions in the National Bank Act permitting such preference or priority. The pledging of assets by way of security is merely another form of granting preferential treatment to the Government. The reasoning in that case which leads to the conclusion that the United States must be denied preferential or priority status over other creditors because such right was not expressly provided for in the

*When in 1938, Congress expressly gave national banks power to pledge for bankruptcy deposits, Sec. 61 of the Bankruptcy Act of 1938, 52 Stat. 872 (U. S. C., title 11, sec. 101), it but accorded with the suggestions of this Court. See letter from the Chief Justice to the Attorney General, dated May 25, 1937.

National Bank Act would seem to require by analogous reasoning, the conclusion that neither the United States nor its agencies can acquire preferential or priority status from national banks by pledges of assets to secure their deposits, unless specific provisions to that effect are contained within the National Bank Act or the amendments thereto.

The policy of Congress to protect the deposits of private citizens in national banks is also shown by the enactment of the Banking Act of 1935, *supra*, which not only re-appropriated a large sum of public money for non-dividend paying stock of the Federal Deposit Insurance Corporation, and directed that a greater sum be advanced by the Reconstruction Finance Corporation or the Treasury, whenever needed to meet the Corporation's insurance obligations, but gave the Secretary of the Treasury power to make further advances in his discretion, limited only by the amount of obligations the Corporation may issue. Sec. 101, 49 Stat. 686, 699, amending sec. 3 of the Act of June 16, 1934, 48 Stat. 971; and sec. 8 of the Banking Act of 1933, 48 Stat. 168, 177. (U. S. C., title 12, sec. 264(d) (o); see title 15, sec. 606(a); see (1935) Rep. Fed. Dep. Ins. Corp. 10, (1936) *Id.*, 34, 36. In so legislating, Congress was not unappreciative of the question of pledging. Sec. 11(d) of the Banking Act of 1933, 48 Stat. 182 (U. S. C., title 39, sec. 759); secs. 339, 340 of the Banking Act of 1935, 49 Stat. 721 (U. S. C., title 12, sec. 192; title 11, sec. 101); *cf.* Act of June 24, 1938, 52 Stat. 1037. (U. S. C., title 25, sec. 162(a)). Such provision of funds at the public risk recognizes in effect that the Government is no longer obliged to look solely to its own economic safety in times of stress, but may partly devote its now great credit and sources of revenue to the assistance of particularly distressed citizens. Respecting banking, pledges to Government agencies tend to destroy on the one hand what is fostered on the other.

The doctrine established by the majority opinion, to the effect that implied power exists in national banks to pledge their assets to secure all deposits of monies of federal agencies, even though such deposits do not comprise public

monies of the United States within the purview of Section 45, is so sweeping in scope and so far-reaching in effect, that it is earnestly felt by petitioner that the interests of the common or general depositors of national banks, not only in the closed bank involved in the litigation in the instant case, but in national banks throughout the country, can well justify affording an opportunity for these aspects of the matter to be examined anew and presented in reargument before the issues shall be finally settled.

Respectfully submitted,

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Justus S. Wardell, Receiver.

I hereby certify that this application is presented in good faith and not for delay.

BRICE CLAGETT,
Counsel.

APPENDIX.

73D CONGRESS, 2d Session } SENATE { DOCUMENT No. 175

Security of National Banks for Deposits of Public Moneys

Letter From

THE SECRETARY OF THE TREASURY

Transmitting

A Draft of a Bill to Amend Section 5153 of the Revised Statutes, Designed to Clarify the Situation With Respect to the Giving of Security by National Banks for Deposits of Public Moneys

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April 26 (calendar day, April 28), 1934.—Referred to the Committee on Banking and Currency and ordered to be printed

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APRIL 27, 1934.

MY DEAR MR. PRESIDENT: I have the honor to forward herewith a draft of a bill to amend section 5153 of the Revised Statutes, designed to clarify the situation with respect to the giving of security by national banks for deposits of public moneys.

This matter has been the subject of an exhaustive study, and the enactment of the proposed legislation is recommended by the Comptroller of the Currency. I am forwarding herewith a copy of excerpts from a memorandum forwarded to me by him.

If you deem it advisable, it will be appreciated if these proposals can be submitted for consideration through the appropriate channels.

Respectfully yours,

H. MORGENTHAU, JR.,
Secretary of the Treasury.

Hon. JOHN N. GARNER,
President United States Senate.

Attached hereto is text of proposed amendment to section 5153 of the Revised Statutes, as amended (U. S. C., title 12, sec. 90), which amendment relates to the designation of depositaries of public money by the Secretary of the Treasury and the giving of security by national banking associations for deposits of public money of the United States and for various other types of deposits made by public officials, consisting of money for which they are accountable under the law by virtue of their official capacity. The essential respects in which this amendment changes the present law is in that it eliminates doubt under recent decisions as to the power of national banks to give security for the protection of deposits of public money belonging to various Government agencies or of money deposited thereby where they are accountable for such money by reason of the official capacity in which held.

The amendment operates with similar effect as to deposits by officers, agents, or employees of the States, Territories, or insular possessions or any public instrumentality or agency thereof, where the depositing official is charged with the custody of and is accountable for such money by virtue of his official position. Provision is made that security heretofore given for the various types of deposits referred to shall be deemed validly given except where heretofore determined to be in violation of the act of June 25, 1930.

There is urgent necessity for the prompt enactment of this legislation, due to recent decisions of the Supreme Court of the United States, particularly two decisions rendered February 5, 1934, in *City of Marion, Illinois,* v. *Sneeden, Receiver,* and *Texas and Pacific Railway Company* v. *Pottorff, Receiver,* in which the Court took the position that national banks have no implied power to give security for deposits of public money, notwithstanding the fact that for more than 60 years national banks have been giving such security with the approval of the Comptroller of the Currency, in conformance to the views expressed by the Attorney General of the United States (in 30 Ops. Atty. Gen. 341), to the effect that the section being amended "is more reasonably construed as a recognition of the existence of the power on the part of national banks to give security for deposits than as a grant by implication or authority to give security for Government deposits alone." A large number of national banks have been placed in the

hands of receivers in the past 3 years. Almost all of these banks held deposits of public money for which security had been pledged. Millions of dollars in such deposits belonging to the Philippine Islands, the United States Shipping Board, Emergency Fleet Corporation, United States Housing Corporation, and similar entities were on deposit in these banks under a contract, whereby the bank had pledged collateral security therefor. These pledges were considered valid by this office and these agencies permitted to avoid loss of such deposits through realization upon the collateral held. Unless curative legislation is enacted to cover this situation, it may be the duty of this office as a matter of law to require these various agencies to restore these funds to the receivers of the various banks in which they were on deposit. Creditors of some of the banks are insisting upon such action being taken at this time. If such restoration must be made, then in most cases a substantial loss will be suffered by the depositing unit, which loss will in many instances ultimately fall upon the Treasury. The situation is also urgent from the standpoint of the going national bank, inasmuch as the various depositing units are now on notice as to the possible lack of power in the banks to give security for their deposits, with the result that these banks are threatened with the withdrawal of hundreds of millions of dollars, which no doubt will be deposited in State banks which do under the State law possess power to give collateral security therefor.

The same situation exists with respect to deposits of funds by the States and their various agencies. Generally speaking, there has been a preference given national banks by the depositing officials thereof. The State treasurer of Illinois within the past 10 days has indicated he feels that he must withdraw approximately $54,000,000 from national banks in Illinois, $26,000,000 of which is in two Chicago banks. The legal representatives of various drainage and irrigation districts in California have indicated that unless the law is clarified, they must withdraw some $50,000,000 from national banks in California. When one considers the total amount of such deposits in national banks all over the United States which may thus be suddenly withdrawn, and the consequent forced liquidation of assets which may be required of such banks in order to meet such withdrawals with resulting ill effect upon market conditions, it becomes imperative to avoid such result by having appro-

priate legislation promptly enacted eliminating the difficulty.

I accordingly recommend that appropriate action be taken to have this amendment enacted into law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5153 of the Revised Statutes, as amended (U. S. C., title 12, sec. 90; U. S. C., supp. VII, title 12, sec. 90), is amended to read as follows:

"SEC. 5153 (a). All national banking associations, designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them. The Secretary of the Treasury shall require the associations thus designated to give satisfactory security, by the deposit of United States bonds and otherwise, for the safe keeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government: *Provided,* That the Secretary shall, on or before the 1st of January of each year, make a public statement of the securities required during that year for such deposits. And every association so designated as receiver or depositary of the public money shall take and receive at par all of the national currency bills, by whatever association issued, which have been paid into the Government for internal revenue, or for loans or stocks: *Provided,* That the Secretary of the Treasury shall distribute the deposits herein provided for, as far as practicable, equitably between the different States and sections. Notwithstanding the extent if any, to which the same may not heretofore have been applicable thereto, the provisions of this paragraph, of section 3621 of the Revised Statutes, as amended (U. S. C., title 31, sec. 495), and of the thirteenth paragraph of section 9 of the Federal Reserve Act, as amended (U. S. C., supp., VII, title 12, sec. 332), shall apply to any and all money held by any instrumentality or agency of the United States, or by any officer, employee, or agent of the United States, or of any such instrumentality or agency, in his official capacity, and shall, to the extent designated by the Secretary of the Treasury apply to any money held by any corporation in which, or in the funds of which, the United States has an interest, or by any officer, employee, or agent of any such corporation, in his official capacity. Nothing in this paragraph shall be construed to affect any powers conferred by section 17 of the Act of March 3, 1911 (U. S. C., title 25, sec. 156), section 28 of the Act of May 25, 1918 (U. S. C., title 25, sec. 162), section 1 of the Act of August 24, 1912, as amended (U. S. C., title 39, sec. 759), section 61 of the Act of July 1, 1898, as amended (U. S. C., title 11, sec. 101), section 3 of the Act of March 3, 1933 (U. S. C., supp. VII, title 11, sec. 101a), and section 5234 of the Revised Statutes, as amended (U. S. C., title 12, sec. 192).

"(b) Any association, upon the deposit with it of any money by any State, or by any political subdivision of any State, or by any officer, employee, or agent of any such State or subdivision, in his official capacity, may give security for the safe keeping and prompt payment of the money so deposited; and, upon such deposit by any public instrumentality or agency of one or more States, or of one or more political subdivisions of any State, or by any officer, employee, or agent of any such instrumentality or agency, in his official capacity, may, with the consent of the Comptroller of the Currency, give such security; but no security shall be given under this paragraph with respect to any deposit if, under the statute law of the State in which such association is located, the giving of security for such deposit by other

banking institutions in such State is prohibited. As used in this paragraph the term "State" means any State, territory, District, or possession (including the Philippine Islands) of the United States.

"(e) All security for any deposits described in this section heretofore given by any association shall be deemed to have been validly given except where the enforcement of such security has been denied by the Comptroller of the Currency as in violation of the second paragraph of this section (U. S. C., supp. VII, title 12, sec. 90), as in force after June 25, 1930, and prior to the enactment of this paragraph, and no such security, enforcement of which was so denied, shall be deemed to have been validly given."